



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 22, 2022

IN THE MATTER OF:

Appeal Board No. 622615

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 622615, 622616 and 622617, the claimant applies to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and

reconsideration from the decisions of the Administrative Law Judge filed March 17, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective August 31, 2020 through September 27, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$364 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were

accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant had filed a claim effective May 4, 2020. He did not receive a claimant information handbook. The claimant began working for

this employer on or about September 1, 2020 as a seasonal employee. He worked 10-hour shifts at \$16 per hour through January 5, 2021.

In the week ending September 6, 2020, he was in paid training on three days, earning gross pay of \$400.32. In the week ending September 13, 2020, he worked and earned gross pay of \$699.93. In the week ending September 20, 2020, he worked and earned gross pay of \$652.48. In the week ending September 27, 2020, he worked and earned gross pay of \$659.20.

On the Sunday of each of these four weeks, the claimant certified for benefits. Each week, he was asked if he had worked during the week and, if so, how many days he had worked. He was also asked if he had earned more than the maximum benefit rate of \$504, before taxes, from that employment. For the week ending September 6, 2020, he stated he had worked zero days and that he had not earned more than \$504. For the week ending September 13, 2020, the claimant stated he worked 3 days and had not earned more than \$504. For the week ending September 20, 2020, he certified that he had worked 2 days and had not earned more than \$504. For the week ending September 27, 2020, he certified that he worked 2 days and had not earned more than \$504.

OPINION: The initial determinations before us were issued on November 5, 2021, which is more than one year after the period covered by the initial determinations. Pursuant to Labor Law § 597(3), a willful misrepresentation on

the claimant's part must be established in order for the Commissioner of Labor to have had the authority to issue a redetermination of benefits received during the period of August 31, 2020 through September 27, 2020.

The credible evidence establishes that for the weeks ending September 13, 2020, September 20, 2020, and September 27, 2020, the claimant certified that he did not earn more than \$504 during each week. The claimant has testified that in each of these weeks, he worked and was paid gross sums in excess of \$504. Each statement that he did not earn more than \$504 is factually false. Since the claimant knew he was working and earning in excess of \$504 each week, each of these certifications is an intentionally made statement and constitutes a willful misrepresentation to obtain benefits. "Willful" as used here does not imply a criminal intent to defraud but means "knowingly", "intentionally", "deliberately" to make a false statement (see *Matter of Vick*, 12 AD2d 120 [3rd Dept 1960]). Accordingly, we conclude that each of the certifications for the weeks ending September 13, 2020, September 20, 2020,

and September 27, 2020 constitutes a willful misrepresentation to obtain benefits. As there is no forfeit penalty imposed, we need not consider the claimant's certification for the week ending September 6, 2020. Due to the claimant's willful misrepresentations for the weeks ending September 13, 2020, September 20, 2020 and September 27, 2020, we conclude that there was jurisdiction to issue the initial determinations at issue.

The credible evidence establishes that the claimant worked in paid training for three days during the week ending September 6, 2020 and worked 4 or more days in the weeks ending September 13, 2020, September 20, 2020, and September 27, 2020. We are not persuaded by the claimant's testimony regarding the number of days he worked, as his testimony was inconsistent. The claimant had indicated that he could not recall the days he worked during the week ending September 13, 2020, but also testified to working two days during that week, as well as three days. Likewise, for the week ending September 20, 2020, he testified that he worked four days and then testified he had worked three days that week. We, therefore, accept the estimate of the Department of Labor based on the claimant's hours of work as determined by the pay he received and his hourly pay rate of \$16.00 per hour. As the claimant was paid \$699.93 during the week ending September 13, 2020, \$652.48 for the week ending September 20, 2020, and \$659.20 for the week ending September 27,

2020, he had worked approximately 43.7 hours, 40.78 hours, and 41.2 during these weeks. Pursuant to the

Department of Labor's formula, as the claimant worked more than 27.1 hours during the week, he is deemed to have worked four or more days during the week. Accordingly, we conclude that the claimant lacked total unemployment on three days in the week ending September 6, 2020 and lacked total unemployment in each of the three remaining weeks running through September 27, 2020.

The credible evidence further establishes that the claimant received PUA benefits in the amount of \$364. The claimant was not entitled to receive those PUA benefits because he lacked total unemployment on three days in the first week and lacked total unemployment in each of the remaining weeks. Accordingly, consistent with federal law, we conclude that the claimant is liable for repayment of the PUA benefits.

As the claimant has made willful misrepresentations to obtain benefits and was overpaid benefits which are recoverable, he is subject to the civil penalty

imposed.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board Nos. 622615, 622616 and 622617, the initial determinations, holding the claimant ineligible to receive benefits, effective August 31, 2020 through September 27, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$364 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER